IN THE HIGH COURT OF PUNJAB AND HARYANA , CHANDIGARH

Civil Writ Petition No. 3767 of 2006
Date of Decision : 19.4.2007

Avtar Singh

.....Petitioner

Versus

Indian Red Cross Society, Jalandhar and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present : Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. V.K. Shukla, Advocate
for the respondents.

JUDGEMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 31.1.2006 (P-4) passed by the Financial Secretary, Distt. Red Cross Society, Jalandhar terminating the services of the petitioner.

Brief facts of the case are that the petitioner joined the service of the Indian Red Cross Society, Jalandhar on 21.1.1997 as Ambulance driver. He was dismissed from service on 19.6.1998. He challenged the order of his dismissal by seeking reference to the Labour Court. On 18.2.1999, the Additional Labour Commissioner, Punjab referred the matter to the Labour Court for adjudication. On 28.5.2003, the Labour Court, Jalandhar held the order of termination of the petitioner dated 19.6.1998 as illegal and he was ordered to be reinstated in service by awarding him 1/3rd back-wages and continuity in service.

It is pertinent to mention that one Vijay Kumar was appointed on 20.6.1998 as driver after the termination of the services of the petitioner. The award passed by the Labour Court was upheld by this Court as the writ petition No. 4706 of 2004 filed by the respondents was dismissed on 10.3.2005 (P-2). The petitioner was thereafter reinstated and joined back the service on 14.6.2005. However, on 30.1.2006 the petitioner was stated to have been granted extension in his service till 31.1.2006 (P-3). On the very next day on 31.1.2006, the respondent passed an order terminating his services (P-4) by reciting that the petitioner was working on a temporary post, at a consolidated salary of Rs. 1,750/-(Rs. one thousand seven hundred fifty only) and was given extension from time to time as per requirements. His last extension was granted till 31.1.2006. He was accordingly relieved from duty.

The stand of the respondent in the written statement is that on account of non-requirement of his services, the petitioner was relieved vide order dated 31.1.2006. It is claimed that the petitioner has no right to become permanent nor his services can be regularized as per the law laid down by a Constitution Bench of Hon'ble the Supreme Court in the case of Secretary, ***State of Karnataka v. Uma Devi and Others,*** 2006(3) SLR 1. Another objection raised to the effect that Red Cross Society is not an instrumentality of the State within the meaning of Article 12 of the Constitution.

We have heard learned counsel for the parties and perused the paper book. A preliminary objection with regard to maintainability of the writ petition may first be dealt with. In Para 8 of the writ petition that there are specific averments made by the petitioner that this Court while following a judgement of the Rajasthan High Court has held in the case of ***Smt. Santosh Rani v. Indian Red Cross Soceity*** (**CWP 13347 of 1995,** decided on 14.12.1995) that the Indian Red Cross Society is amenable to the writ

jurisdiction of this Court. The controversy having been settled does not require to be reopened especially when there is no denial of averments made in Para 8 of the petition in the corresponding para of the written statement.

On merits, it is pertinent to mention that the petitioner has been working as driver with the Red Cross Society since 21.1.1997 against a regular post. After the termination of the petitioner on 19.6.1998 one Vijay Kumar was appointed in place of the petitioner. The aforementioned facts are evident from the perusal of the order dated 10.3.2005 passed by this Court in CWP No. 4706 of 2004, which was filed by the Red Cross Society to challenge the award of the Labour Court. The petitioner could succeed in his reinstatement only on 14.6.2005, after a period of more than 2 years of the date of the award. Thereafter, the services of the petitioner have been dispensed with for a period of 6 months. It could not be disputed that the job of Ambulance driver is of perennial nature and the Red Cross Society would not be able to function without Ambulance driver because the basic function of the Red Cross Society is to provide timely help to those who are affected by natural calamities or illness. Even otherwise, the petitioner has been working on a regular post and the petitioner was a regular employee. There is no warrant of law in terminating the services of a regular employee without complying with the minimum rules of natural justice. In that regard reliance may be placed on a Constitution Bench Judgement of Hon'ble the Supreme Court in ***Delhi Transport Corporation v. DTC Mazdoor Sabha,*** 1991 Supp (1) SCC 600.

Moreover, when we are further of the view that a regular confirm employee cannot be removed from service without holding any regular departmental inquiry. In case, the employee has become surplus then the principle of last come, first go has to be applied. The other driver Vijay Kumar, who was inducted in service on 20.6.1998 next day after the

services of the petitioner, has been allowed to be continued in service, whereas the petitioner who has been working since 21.1.1997 has been relieved from his duty on the excuse that there is no further need of this post. This is absolutely arbitrary and violate Article 14 of the Constitution. In that regard, we may place reliance on the judgement of Hon'ble the Supreme Court in Delhi Transport Corporation's case (supra) and the judgement of Hon'ble the Supreme Court in the case of ***Central Inland Water Corporation v. Brojo Nath Ganguly,*** AIR 1986 SC 1571.

In view of the above, we quash the impugned order dated 31.1.2006 (P-4). The petitioner is accordingly reinstated in service with all consequential benefits including full back-wages. The petitioner shall be permitted to join his services and his arrear be paid within 2 weeks from the date of receipt of a certified copy of this order.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

April 19, 2007
Amit